

**Testimony Before the  
Fair Political Practices Commission  
Subcommittee on the Political Reform Act & Internet Political Activity**

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My name is Tony Miller and I am Chief of the Political Reform Division of the Secretary of State's office.

Secretary of State Bowen greatly appreciates the invitation to appear before the Subcommittee today and apologies that she could not attend herself. However, she certainly applauds all of you for your continued willingness to tackle what is an important and complex issue, which is why she asked that I appear before you today to share some of her thoughts with the members.

In my youth I was a statewide campaign manager. Later I was a charter member of the Fair Political Practices Commission, Chief Counsel to the Secretary of State, Chief Deputy Secretary of State, Acting Secretary of State, and a proponent of two initiative measures relating to campaign finance.

Even for old-timers like me, it is hard to imagine when there was no Internet. I didn't grow up with the Internet, but I did grow a lot older during its ascendancy. I recall discussing with some visionaries in 1993 from Silicon Valley the possibility of the Secretary of State posting election night results on something called the World Wide Web. The election night results could be downloaded at a blazing speed of 9600 kilobytes per second and the Secretary of State's office did it for the 1994 Primary Election. It stunned the media and the political community. It was a first and it is, in my mind, one of the most important and far-reaching projects in which I have been involved as a state employee.

The Internet has changed our lives in so many ways and even though I agree with country singer Alan Jackson when he applauds the digital age — but says that he still likes baloney on white bread now and then — there is no going back. Another country singer — Brad Paisley — puts it another way — “Welcome to the Future.”

The Bipartisan California Commission on Internet Political Practices recognized that nearly a decade ago as it delved into the thorny issues surrounding campaigning in the digital age pursuant to laws written on the 20<sup>th</sup> century equivalency of stone tablets. The report of the commission was farsighted, if somewhat inconclusive as to what should and could be done.

Most of the questions raised by the commissioners remain unanswered today, but how long we should allow them to remain unanswered is a question in itself. By the time we collectively realize that some form of regulation is necessary, it may be difficult to put the genie back in the bottle, and the risk of over-reaction and over-regulation increases at that point.

I think most of you are familiar with Secretary Bowen's passion for both technology and transparency. She, along with former legislator and now Board of Equalization Member Bill



Leonard, were the first two legislators to demand an email address in the Legislature back in the early 1990's.

Back in 1993, the Secretary, along with assistance from Chairman Johnson, authored the bill that put all of the Legislature's bills, analyses, voting records, and more online, making California not just the first state in the nation to do it, but also the first governmental body to use the World Wide Web in that fashion. Then in 1996, she was the first member of the Legislature to voluntarily post her campaign reports on line, years before the law took effect to require state officials to file them electronically.

When Secretary Bowen looks at what, if any, requirements should be imposed when it comes to electronic campaigning, she feels there are three over-arching principles that should guide the decision making process:

- First, candidates and campaigns should be accountable for the information they authorize and distribute;
- Second, voters should not be misled by candidates and campaigns about the source of the information that's distributed; and
- Third, people should be free to engage in political discourse — be it subtle or vigorous robust debate — without being ensnared by obscure traps for the unwary.

The question is how best to accomplish these things. As one presenter said at the Sacramento hearing, the goal in terms of regulating this aspect of the political process is to do no harm. However, there can be harm in doing nothing as well, if candidates and campaigns aren't held accountable for what they produce and if voters are allowed to be misled and misinformed.

Some suggestions:

Candidates and recipient committees that authorize or send out electronic communications should be required to disclose who they are, just as they are required to disclose who they are in written or broadcast communications. The degree of disclosure in the communication should depend on the type of communication it is. A website, for example, could easily include and should be required to include the recipient committee's complete name and identification number. An email or tweet or similar communication might include only the committee ID number in order to accommodate limits on characters such as "Paid for by ID# 1234567" or "Authorized by ID # 1234567."

The critical thing would be that a voter — or another campaign or a member of the press or a regulator such as the Fair Political Practices Commission — could easily identify the source of the communication if it came from a candidate or a recipient committee. With that disclosure, anyone could seek additional information about the source of the communication, including the source's funding. It would create some accountability without being burdensome. The disclosure requirement would apply whether it is a single email or a million emails if it is sent or authorized by a campaign.

Providing just an ID number may not be useful to some citizens unfamiliar with the campaign finance disclosure process, but for many it would unlock a treasure trove of information available on the Internet, including Cal-Access.

And the disclosure may be lost with repostings or modifications by others including site managers — but that happens now in the paper world and is far better than what we now have which, in many cases, is nothing. And it would be unlikely to trap Commissioner Garret's 12-year-old niece — unless she happens to be a candidate or managing a recipient committee.

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And that leads to another suggestion.

Mandated disclosure is relatively easy when it comes to candidates and recipient committees. They are already required, generally, to report financial activity pursuant to the Political Reform Act and are subject to various disclosure requirements with respect to advertisements and mass mailings. But what about the non-candidate or non-recipient committee that becomes or wants to become engaged in the political process? What about the voter or entity that simply wants to exercise the right to share an opinion by expressly advocating the election or defeat of a candidate or take a position with respect to a measure?

Once they spend \$1,000, should they be subject to all of the reporting obligations of an independent expenditure committee? Of course, there is an issue with respect to reaching the \$1,000 threshold for becoming an independent expenditure committee. It should be made clear that, consistent with current regulation 18450.1, web-based or Internet-based communications themselves should not be deemed to have value for purposes of qualifying as a committee.

Although it would make sense to attribute value to design and production costs, the \$1,000 qualification threshold may be too low at least for state campaigns. Perhaps a higher threshold, perhaps \$10,000 for state campaigns, would be appropriate. Clearly, the sky should not be the limit...but neither should the threshold be so low that political discourse is stifled. When it comes to electronic communications, \$1,000 is too low for state campaigns. I suspect Commissioner Garrett's niece would agree.

Disclosure of candidate and recipient committee communications and addressing independent expenditure committee qualification are central to regulating in the digital age, but there are other issues relating to campaign finance disclosure. The Online Disclosure Act of 1997 requires major campaign and lobbying entities to file disclosure statements and reports online. The Secretary of State makes that information available on the Internet via a searchable database. That has led to sunshine illuminating some of the previously dark recesses of the political process.

Cal-Access, the electronic system created to implement the Online Disclosure Act of 1997, is — like me — a bit older, a bit cranky, inflexible, slow, and lacking some desired functionality. But it has been, and is, remarkably successful. The proof is in its use. Since it went online in 2000, it has had over 50 million hits. During the filing period for the first pre-election statements with respect to the June 2010 primary which ended two days ago, the Secretary of State's office received 1,465 campaign electronic filings.

Paper filings — and we still have a lot of those — gather dust. Online filing and access to the information are where the action is. Accurate and timely disclosure is the lifeblood of the Political Reform Act. And with the Internet, that lifeblood runs faster and purer than ever before. Twenty-four hour Internet disclosure of certain campaign contributions received and independent expenditures made during the 90 day election cycle has dramatically enhanced the information made available to the public. But one thing we could do to take advantage of the tremendous benefits afforded by the Internet is to enlarge the disclosure parameters for timely disclosure of large contributions received and independent expenditures made. Twenty-four or even forty-eight hour online disclosure of all contributions of \$1,000 received or \$1,000 independent expenditures made at any time by any committee would be a significant improvement in this digital age. That's a simple, but effective improvement.

Another one would be to drop the online/electronic thresholds, requiring that all state candidates and committees file online/electronically. Currently, only state filers that have

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cumulative contributions and expenditures of \$50,000 since 2000 must file online/electronically. Lobbying entities with reportable amounts of \$5,000 in any one quarter must file online/electronically. Eliminating those threshold amounts would mean that all state filers would file online/electronically making the information accessible over the Internet. That is another simple, but effective improvement.

But what really needs to be done to bring disclosure fully into the digital age was touched on by the Bipartisan California Commission on Internet Political Practices back in 2003. It is included in recommendation number 12, on page 48 of the report. It is: "Move Toward Interoperability in Online Campaign Reporting Systems." The Commission said:

"The State should take steps to encourage local jurisdictions and the State to integrate online campaign finance reporting systems if it is possible to do so without mandating the use of particular reporting technology."

Indeed. The Secretary of State's office should be the central repository or integrator for all campaign finance disclosure information for California state, local, and federal candidates and campaigns. Disclosure data for all California campaigns should be accessible on the Internet at one convenient location — the Secretary of State's office. The data would either be filed electronically/online with the Secretary of State, or the Secretary of State's server would link directly or indirectly to local or federal data repositories.

Interested in knowing who has contributed to a candidate for city council in Redding? Go to the Secretary of State's website. Interested in knowing who has contributed to a candidate for the State Assembly in your Assembly District? Go to the Secretary of State's website. Interested in knowing who has contributed to a candidate for congress in your congressional district? Go to the Secretary of State's website. It would be a one stop shop for campaign finance disclosure at all levels.

The Secretary of State's office is the most logical place to put it, but if someone wants to put it somewhere else, that's fine — the point is that everything should be in one location for easy of access. This is not new technology. This is not a new concept. But it hasn't been done and it should be.

It would require a total rebuild of the current Cal-Access system and it would cost lots of money. But such a system would probably save some money that is currently spent by local governments trying to invent the electronic campaign disclosure wheel. And, in any case, it is impossible to put a price on the value of full and timely campaign finance disclosure on the Internet. It would take a lot of time to do it right. But the time to start is now.

Assembly Bill 1369, introduced by Assembly Member Adams in 2007, proposed to require that local candidates and campaigns file disclosure statements online or electronically with the Secretary of State. The bill died without a hearing, but it led to a continuation of the discussion of the need for a statewide system for receiving and accessing campaign disclosure information based on the Internet. The time will come and the sooner the better.

On behalf of Secretary of State Bowen, I want to again thank you for the opportunity to participate in these proceedings. May you survive your midnight walk in the alligator infested swamp known as implementing the Political Reform Act in the digital age.